

House Bill 2406

Sponsored by Representatives DIEHL, OWENS (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Directs Energy Facility Siting Council to adopt standards, for siting, construction, operation and retirement of energy facilities that generate electricity from renewable energy source, addressing impacts of energy facility's equipment waste recycling and disposal needs over lifetime of energy facility.

Requires county to require applicant for land use permit to establish renewable energy facility to develop mitigation plan to address renewable energy facility's equipment waste recycling and disposal needs.

A BILL FOR AN ACT

1
2 Relating to the impacts of equipment waste from renewable energy facilities; creating new pro-
3 visions; and amending ORS 215.446 and 469.501.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 469.501 is amended to read:

6 469.501. (1) The Energy Facility Siting Council shall adopt standards for the siting, construction,
7 operation and retirement of facilities. The standards may address but need not be limited to the
8 following subjects:

9 (a) The organizational, managerial and technical expertise of the applicant to construct and
10 operate the proposed facility.

11 (b) Seismic hazards.

12 (c) Areas designated for protection by the state or federal government, including but not limited
13 to monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas.

14 (d) The financial ability and qualifications of the applicant.

15 (e) Effects of the facility, taking into account mitigation, on fish and wildlife, including threat-
16 ened and endangered fish, wildlife or plant species.

17 (f) Impacts of the facility on historic, cultural or archaeological resources listed on, or deter-
18 mined by the State Historic Preservation Officer to be eligible for listing on, the National Register
19 of Historic Places or the Oregon State Register of Historic Properties.

20 (g) Protection of public health and safety, including necessary safety devices and procedures.

21 (h) The accumulation, storage, disposal and transportation of nuclear waste.

22 (i) Impacts of the facility on recreation, scenic and aesthetic values.

23 (j) Reduction of solid waste and wastewater generation to the extent reasonably practicable.

24 (k) Ability of the communities in the affected area to provide sewers and sewage treatment,
25 water, storm water drainage, solid waste management, housing, traffic safety, police and fire pro-
26 tection, health care and schools.

27 (L) The need for proposed nongenerating facilities as defined in ORS 469.503, consistent with the
28 state energy policy set forth in ORS 469.010 and 469.310. The council may consider least-cost plans

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 when adopting a need standard or in determining whether an applicable need standard has been met.
 2 The council shall not adopt a standard requiring a showing of need or cost-effectiveness for gener-
 3 ating facilities as defined in ORS 469.503.

4 (m) Compliance with the statewide planning goals adopted by the Land Conservation and De-
 5 velopment Commission as specified by ORS 469.503.

6 (n) Soil protection.

7 (o) For energy facilities that emit carbon dioxide, the impacts of those emissions on climate
 8 change. For fossil-fueled power plants, as defined in ORS 469.503, the council shall apply a standard
 9 as provided for by ORS 469.503 (2).

10 **(p) For energy facilities that generate electricity from a renewable energy source, the**
 11 **impacts of the energy facility’s equipment waste recycling and disposal needs over the life-**
 12 **time of the energy facility.**

13 (2) The council may adopt exemptions from any need standard adopted under subsection (1)(L)
 14 of this section if the exemption is consistent with the state’s energy policy set forth in ORS 469.010
 15 and 469.310.

16 (3)(a) The council may issue a site certificate for a facility that does not meet one or more of
 17 the applicable standards adopted under subsection (1) of this section if the council determines that
 18 the overall public benefits of the facility outweigh any adverse effects on a resource or interest
 19 protected by the applicable standards the facility does not meet.

20 (b) The council by rule shall specify the criteria by which the council makes the determination
 21 described in paragraph (a) of this subsection.

22 (4) Notwithstanding subsection (1) of this section, the council may not impose any standard de-
 23 veloped under subsection (1)(b), (f), (j) or (k) of this section to approve or deny an application for
 24 an energy facility producing power from wind, solar or geothermal energy. However, the council
 25 may, to the extent it determines appropriate, apply any standards adopted under subsection (1)(b),
 26 (f), (j) or (k) of this section to impose conditions on any site certificate issued for any energy facility.

27 **SECTION 2.** ORS 215.446 is amended to read:

28 215.446. (1) As used in this section:

29 (a) “Average electric generating capacity” has the meaning given that term in ORS 469.300.

30 (b) “Energy generation area” has the meaning given that term in ORS 469.300.

31 (c) “Renewable energy facility” means:

32 (A) A solar photovoltaic power generation facility using:

33 (i) More than 100 acres but not more than 160 acres located on high-value farmland as defined
 34 in ORS 195.300;

35 (ii) More than 100 acres but not more than 1,280 acres located on land that is predominantly
 36 cultivated or that, if not cultivated, is predominantly composed of soils that are in capability classes
 37 I to IV, as specified by the National Cooperative Soil Survey operated by the Natural Resources
 38 Conservation Service of the United States Department of Agriculture; or

39 (iii) More than 320 acres but not more than 1,920 acres located on any other land.

40 (B) An electric power generating plant with an average electric generating capacity of at least
 41 35 megawatts but less than 50 megawatts if the power is produced from geothermal or wind energy
 42 at a single plant or within a single energy generation area.

43 (2) An application for a land use permit to establish a renewable energy facility must be made
 44 under ORS 215.416. An applicant must demonstrate to the satisfaction of the county that the
 45 renewable energy facility meets the standards under subsection (3) of this section.

(3) In order to issue a permit, the county shall require that the applicant:

(a)(A) Consult with the State Department of Fish and Wildlife, prior to submitting a final application to the county, regarding fish and wildlife habitat impacts and any mitigation plan that is necessary;

(B) Conduct a habitat assessment of the proposed development site;

(C) Develop a mitigation plan to address significant fish and wildlife habitat impacts consistent with the administrative rules adopted by the State Fish and Wildlife Commission for the purposes of implementing ORS 496.012; and

(D) Follow administrative rules adopted by the State Fish and Wildlife Commission and rules adopted by the Land Conservation and Development Commission to implement the Oregon Sage-Grouse Action Plan and Executive Order 15-18.

(b) Demonstrate that the construction and operation of the renewable energy facility, taking into account mitigation, will not result in significant adverse impacts to historic, cultural and archaeological resources that are:

(A) Listed on the National Register of Historic Places under the National Historic Preservation Act (P.L. 89-665, 54 U.S.C. 300101 et seq.);

(B) Inventoried in a local comprehensive plan; or

(C) Evaluated as a significant or important archaeological object or archaeological site, as those terms are defined in ORS 358.905.

(c) Demonstrate that the site for a renewable energy facility, taking into account mitigation, can be restored adequately to a useful, nonhazardous condition following permanent cessation of construction or operation of the facility and that the applicant has a reasonable likelihood of obtaining financial assurances in a form and amount satisfactory to the county to secure restoration of the site to a useful, nonhazardous condition.

(d) Develop a mitigation plan to address the impacts of the renewable energy facility's equipment waste recycling and disposal needs over the lifetime of the renewable energy facility.

[(d)] (e) Meet the general and specific standards for a renewable energy facility adopted by the Energy Facility Siting Council under ORS 469.470 (2) and 469.501 that the county determines are applicable.

[(e)] (f) Provide the financial assurances described in paragraph (c) of this subsection in the form and at the time specified by the county.

(4) Upon receipt of a reasonable cost estimate from the state agency or tribe, the applicant and county may jointly enter into a cost reimbursement agreement administered by the county with:

(a) The State Department of Fish and Wildlife to receive comments under subsection (3)(a) of this section.

(b) The State Historic Preservation Officer or any affected federally recognized Indian tribe to receive comments under subsection (3)(b) of this section.

(c) The State Department of Energy to receive comments under subsection (3)(c), *[and]* (d) **and** (e) of this section as well as comments regarding other matters as the county may require.

(5) A county that receives an application for a permit under this section shall, upon receipt of the application, provide notice to persons listed in subsection (6) of this section. The notice must include, at a minimum:

(a) A description of the proposed renewable energy facility;

(b) A description of the lots or parcels subject to the permit application;

1 (c) The dates, times and locations where public comments or public testimony on the permit
2 application can be submitted; and

3 (d) The contact information for the governing body of the county and the applicant.

4 (6) The notice required under subsection (5) of this section must be delivered to:

5 (a) The State Department of Fish and Wildlife;

6 (b) The State Department of Energy;

7 (c) The State Historic Preservation Officer;

8 (d) The Oregon Department of Aviation;

9 (e) The United States Department of Defense; and

10 (f) Federally recognized Indian tribes that may be affected by the application.

11 **SECTION 3. The amendments to ORS 215.446 and 469.501 by sections 1 and 2 of this 2023**

12 **Act apply to applications filed on or after the effective date of this 2023 Act.**

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